

9 FAM 42.44 NOTES

*(CT:VISA-1324; 09-25-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.44 N1 GENERAL INFORMATION ON DNA TESTING

(CT:VISA-1324; 09-25-2009)

- a. Deoxyribonucleic Acid (DNA) testing is the most accurate and widely available technology to test a biological relationship. The types of tests used by the DNA scientific community continue to evolve; currently, the Polymerase Chain Reaction-Short Tandem Repeat (PCR-STR) and the Restriction Fragment Length Polymorphism (RFLP) methods are the two tests that we believe to be the most advanced, offering the best results. These tests are preferred over older technologies such as human leukocyte antigens (HLA) and human blood alleles (ABO) blood typing because they do not require blood samples and are more accurate when all parties are not available for testing and/or when the other possible father (in a paternity case) or mother (in a maternity case) is thought to be related to the tested party.
- b. DNA testing reliability has advanced to the industry-accepted standard of 99.5 percent. Consular officers may only accept test results reporting a 99.5 percent or greater degree of certainty with respect to paternity/maternity as sufficient to support a biological relationship between a parent and child in visa cases. However, a test that supports paternity/maternity to a degree less than 99.5 percent generally can be followed by retests to determine if the 99.5 percent accuracy can be achieved. If, after several attempts, it is not possible to reach the accepted level, and you remain unconvinced of the bona fides of the relationship in question, return the petition to the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) via the National Visa Center along with a memo explaining the return and a copy of the DNA test(s) results.

9 FAM 42.44 N2 DNA TESTING COLLECTION METHOD

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- a. The preferred specimen collection technique for DNA testing is by buccal (cheek or mouth cavity) swab. When buccal swabs are taken, cells are collected from the inside cheek using a long cotton swab. Cheek swabs are preferred over blood samples because they are easier to collect, non-invasive, painless, and easier to ship. The accuracy of a DNA test conducted with a cheek swab is equivalent to a test conducted using a blood test, and, unlike blood, cheek swabs are not considered to be bio-hazardous. Inform panel physicians and lab technicians that this is the preferred collection method for immigration cases.
- b. Post must obtain advance approval from the Post Liaison Division (CA/VO/F/P) if you are unable to use buccal swabs and must use blood draws instead.

9 FAM 42.44 N3 WHEN TO RECOMMEND GENETIC TESTING TO VERIFY RELATIONSHIPS

(CT:VISA-1324; 09-25-2009)

- a. Genetic testing is a useful tool for verifying an alleged biological relationship when no other form of credible evidence is available in conjunction with an immigrant visa (IV) application. Commonly tested relationships requiring DNA testing include paternity, maternity, full-siblingship, or half-siblingship. More distant relationships cannot be proven reliably using DNA testing. Testing to establish relationships other than parent/child, such as sibling, may also be recommended but only in addition to a parent/child test (see 9 FAM 42.44 N4).
- b. DNA technology is the only non-documentary method accepted for proof of a biological relationship. However, due to the expense, complexity, and logistical delays inherent in parentage testing, genetic testing should be used **only** if no other credible proof (documentation, photos, etc.) of the relationship exists. The process is time-consuming for the applicant, the petitioner, and the consular section, and it does not necessarily yield conclusive results. You must exhaust all other possible methods of confirming a relationship before recommending a DNA test; it should be a last resort rather than a first.

NOTE: you may recommend DNA testing, but may not require it.

- c. When genetic testing appears warranted, advise the applicant that genetic testing may establish the validity of the relationship; that such testing is entirely voluntary; and that all costs of testing and related

expenses must be borne by the petitioner and/or beneficiary and paid to the laboratory in advance. In addition, caution the applicant that submitting to testing does not guarantee the subsequent issuance of a visa.

9 FAM 42.44 N4 WHEN NOT TO RECOMMEND GENETIC TESTING TO VERIFY RELATIONSHIPS

(CT:VISA-1324; 09-25-2009)

- a. You may recommend DNA testing to establish a blood relationship that would qualify an applicant for an immigration benefit. You may not request DNA testing in an attempt to disprove a relationship. For example, do not request DNA testing between marital partners on suspicion that they are blood relatives.
- b. Do not recommend direct sibling testing without parental testing. Direct testing between siblings may show an apparent lack of relationship even when the individuals are full siblings because of the variations in genetic contribution by each parent to individual children. For all sibling cases, each sibling must be tested against the parents (vice direct sibling-to-sibling testing) of the sibling group and return at least a 99.5 percent probability of maternity/paternity. If the results of the sibling-to-parent tests meet the 99.5 percent standard, then the sibling relationship is established through DNA.
- c. Recommend a DNA test of step-children only to establish paternity or maternity with the biological parent/spouse of the qualified petitioner. Do not recommend DNA testing to test for half sibling relationships, cousins, or other such extended relationships, as these tests cannot reach the minimum requirement of 99.5 percent probability.

9 FAM 42.44 N5 GENETIC TESTING AS A BASIS FOR FORM I-130, PETITION FOR ALIEN RELATIVE

(CT:VISA-1324; 09-25-2009)

- a. Return to USCIS any petitions for which the biological relationship has been disproven by DNA test results.
- b. Do not approve a Form I-130, Petition for Alien Relative, which lacks documentary evidence and relies upon genetic testing as sole proof of the

qualifying relationship. Such cases are not clearly approvable and therefore the petitions must be forwarded to USCIS for adjudication. Explain in the accompanying memorandum why other evidence of the alleged relationship is unavailable or not credible, that the case is not clearly approvable, and alert USCIS to the need for genetic testing.

- c. USCIS, on the other hand, can approve a petition based solely on genetic testing, and may request a post's assistance in ensuring that the potential beneficiary submits to such testing under appropriate safeguards. USCIS may also approve a Form I-130 contingent upon verification of an alleged relationship through genetic testing.

9 FAM 42.44 N6 SELECTION OF AABB LAB

(CT:VISA-1324; 09-25-2009)

- a. Any DNA testing for visa or citizenship purposes must be processed by a lab that is accredited by the American Association of Blood Banks (AABB). Names of AABB accredited labs can be found on the AABB Accredited Relationship Testing Facilities Web site.

NOTE: The list of laboratories on the site is based on the physical location of the lab's headquarters, and the operations of most labs are not restricted to that location. Therefore, the petitioner should be able to choose from the full list of AABB laboratories that conduct DNA testing.

- b. The petitioner must select an AABB-accredited laboratory, contact the lab directly, and make the necessary arrangements for conducting the genetic test - including payment for all tested parties.
- c. Under no circumstances should petitioners use third-party vendors to select their lab, arrange appointments, or transport the specimens outside of the lab chain-of-custody controls. For example, a petitioner must independently choose his or her own AABB lab, make the appointment, and go to the collection site directly. The collection site must then send the specimen to the main AABB lab testing site directly, through the lab's internal, controlled system. Third-party vendors include, but may not be limited to, private companies or clearinghouses that serve as intermediaries to make appointments on behalf of petitioners or beneficiaries. The authority for collecting DNA specimens in the United States resides exclusively with the AABB labs and their directly affiliated collection sites.
- d. Under no circumstances should petitioners, including those in the United States, directly receive test kits for themselves or the beneficiaries. The DNA samples for the petitioner must be collected at a designated AABB testing site, lab, or clinic (generally in the United States). The AABB

laboratory selected by the petitioner will send a test kit, including a pre-paid, pre-addressed return envelope and explicit sampling instructions, directly to the consular section for testing of the beneficiary.

- e. Post must note and report to CA/VO/F/P any anomalies, such as petitioners traveling unusual distances to get to a collection site when other collection sites are available closer to them.

9 FAM 42.44 N7 STANDARDS FOR THE COLLECTION OF THE DNA SAMPLES

(CT:VISA-1324; 09-25-2009)

- a. Though advanced, DNA results are only accurate if strict standards are followed for every sample collected. The AABB establishes standards for relationship testing, and the Department of State follows these standards for use in the collection of DNA samples to verify relationships for IVs, passports, and other benefits based on biological relationships.
- b. There are four essential elements that must be understood and maintained to protect the integrity of the DNA collection and relationship testing procedures:
 - (1) As DNA testing is voluntary, the individual being tested must consent to the testing;
 - (2) The identity of the individual being tested must be verified and confirmed by a cleared American;
 - (3) The integrity of the sample must be maintained through a strict chain of custody; and
 - (4) The actual collection of the DNA sample must be witnessed by a cleared American.
- c. Effective immediately, all DNA collections must take place at the embassy or consulate and not at the panel physician's office or other lab facility. Department of State medical officers may not collect biological samples for genetic testing purposes. Furthermore, under no circumstances should consular officers attempt to collect samples themselves. All sample collection must be done by medical personnel employed by the panel physician.
- d. Consular management must approve each lab technician prior to his or her authorization to collect DNA samples from applicants. Each panel physician's office must recommend several lab technicians who will then be cleared and approved by post. The completion of a CLASS namecheck and review of previous visa application(s) and RSO records is the

minimum required clearance to approve a lab technician for operation inside the consulate. Post should take factors including multiple visa refusals into consideration prior to clearing the technician for conducting DNA testing.

- e. Post must choose a site in the consular section for collection of the buccal swab. The collection must be witnessed by the consular officer or another cleared American, and in certain circumstances, section management as well. Posts may wish to explore privacy options, including (but not limited to) privacy booths, interview windows with a curtain separator for privacy, or a regular interview window. Regardless of the final collection location, both the applicant and medical technician must be in the immediate presence of the cleared American witness at all times.
- f. Any American citizen employee of the consular section, possessing a valid "Secret" or higher national security clearance may serve as the cleared American witness for DNA tests. At post's discretion, locally employed staff (LES) may accompany the cleared American to witness the collection. However, a cleared American must be the official witness of DNA testing procedures.
- g. Post must observe the guidelines outlined herein in order to maintain clear chain of custody, including a log to monitor accountability through all steps. See 9 FAM 42.44 Exhibit I for the template for the required accountability log.
- h. DNA procedures should be posted on the post's Web sites as general information to the public, and updated annually. Any questions about what should be included in this information should be directed to CA/VO/F/P.
- i. Any additional post-specific internal controls and procedures involving DNA testing, not included in this cable, must be approved in advance by CA/VO/F/P.

9 FAM 42.44 N8 DNA TESTING PROCEDURES

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- a. Petitioner/putative parent selects AABB accredited lab (see 9 FAM 42.44 N6).
- b. The selected AABB lab sends the beneficiary DNA testing kit(s) directly to the consular section.
- c. The Accountable Consular Officer (ACO) checks in all test kits on the DNA accountability log (see 9 FAM 42.44 Exhibit I for Sample Log) upon

receipt in the consular section. This consists of ensuring that the kit has not been opened or damaged and if the kit includes a seal, confirming the kit seal is intact, adding the kit to the accountability log stored in the ACO safe, and storing it in the ACO safe or a bar lock cabinet. The safe where the DNA kits are stored must be accessible only to the ACO or designated backup.

- d. Once the ACO records receipt of the collection kit, the consular section must contact the applicant to schedule an appointment date for DNA collection and tell the applicant that he/she must bring his/her passport and a photograph.
- e. On the DNA collection appointment date, a lab technician from the panel physician's office must come to the consular section to collect the DNA sample(s).
- f. Immediately prior to the testing, the ACO checks the test kit out of the safe and gives it to the cleared American witness who will witness the collection, recording the cleared American witness's name in the accountability log. The witness verifies that the kit is unopened, and if applicable, the seal is intact. The cleared American witness is responsible for the custody of the testing materials until he or she applies the security seal to the mailing package.
- g. The cleared American witness should review the instructions sent by the AABB lab prior to the DNA collection, so as to be familiar enough with the sample collection technique to recognize if it is not being executed properly by the lab technician.
- h. At the time of testing, the cleared American witness must have the medical technician and applicant/beneficiary come to the interview window or designated location within the consular section, one applicant at a time.
- i. The cleared American witness must personally verify the identity of the donor through:
 - (1) Presentation of passport; and
 - (2) Verifying that the applicant signs on the back of his or her photograph for attachment to the chain of custody document(s).
- j. Once the identity of the applicant has been confirmed, the cleared American witness must do the following:
 - (1) Collect the signed applicant photograph and supporting documents from the applicant;
 - (2) Provide the sealed DNA kit to the lab technician or panel physician;
 - (3) Witness the collection of the buccal swab from the donor/applicant;

- (4) Legibly record required information on chain-of-custody documents. This function may not be performed by LES or an outside party;

NOTE: Minimal chain of custody requirements include, but are not limited to:

- Date and time of the sample collection
 - Name and signature of lab technician conducting the swabs. Name is verified with the technician's ID badge or card
 - Name and signature of the cleared American witness
 - Other specific information required by the AABB laboratory as indicated in the kit instructions
- (5) Witness the lab technician placing the completed DNA sample into the protective sleeve or pouch provided by the lab, accept the specimen from the lab technician or panel physician, and personally seal and sign the sample in accordance with the kit instructions;
- (6) Seal the specimen in the pre-paid shipping envelope provided by the lab. The sample must be in the direct possession of the same cleared American who witnessed the sample collection until the return mailing envelope is sealed in accordance with the instructions from the lab or shipping company. See 9 FAM 42.44 N9 for further details on storing and shipping DNA samples;
- (7) Record in the applicant's case notes:
- (a) His/her name as witness to the collection;
 - (b) Date and time of sample collection;
 - (c) The name of the lab technician (from ID badge or card);
 - (d) The name of the lab or panel physician where the technician is employed; and
 - (e) A clear description of the relationship(s) being tested (e.g., probability that the tested mother or father is the mother/father of the child tested).
- (8) Scan all chain-of-custody documents into the CCD and associate them with the applicant's case. Be sure that the information provided to the AABB lab clearly defines the relationship(s) to be tested. The request should be specific, not "are the parties related?", but rather "is the petitioner the mother/father of the tested applicant?"
- (9) For reporting purposes, DNA cases may be marked as referrals to the Fraud Prevention Unit (FPU) in the IVO and NIV systems. The case must indicate that the reason for the referral is that the case is

pending DNA testing.

9 FAM 42.44 N9 STORING AND SHIPPING OF DNA SAMPLES

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- a. Once the test is completed, the DNA samples must be placed into the pre-paid shipping envelope, sealed, and shipped as soon as possible - preferably the same day. The shipping envelope may not be shipped through the local mail services and must be shipped by a company similar to FedEx or DHL. The cleared American must ensure that all documentation, including supporting forms, photos of the donors, chain-of-custody documents, etc., requested in the test kit, accompany the specimen. Once the kit is sealed, the cleared American is responsible for delivering or ensuring pick-up of the test kit(s) by the mail service. He/she is responsible for the kits until they are turned over for shipment.
- b. All DNA samples must be shipped within 24-48 hours after collection is complete. If kits cannot be shipped on the same day the sample is collected, then the sample must be returned to the ACO for storage until it is released for shipment. The DNA sample kit and all chain of custody materials are controlled items and must be stored securely, at minimum in a bar-lock safe, until the kit is shipped back to the U.S.-based lab.
- c. When the test kit is shipped, a receipt for all kits must be collected from the shipper, the shipment date and tracking number must be entered into the case notes, and the airbill must be scanned into the appropriate case records.
- d. Under no circumstances may posts use the diplomatic pouch or local mail services to return samples to the testing laboratory.
- e. Any variations from these DNA procedures must be approved by CA/VO/F/P in advance and will be considered on a case-by-case basis.

9 FAM 42.44 N10 COMMUNICATING THE RESULTS OF THE DNA TEST

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In all phases of testing, communication of the results of the test must be directly between consular officers or cleared Americans and the laboratory. AABB laboratories will send all test results directly to consular sections in envelopes sealed with the same type of security tape used when samples

are taken. Only a consular officer or cleared American may open the sealed envelopes and perform step (1) below.

- (1) A cleared American receives and opens the sealed DNA results letter and enters the results of the test into the case notes, taking care to record the probability of relationship determined by the testing. Results must be recorded using the following standard phrase: "DNA results indicate xx.xx% likelihood of paternity (or maternity) with PA."
- (2) After the results are entered into the case notes by a cleared American, the results must be scanned into the case record. An LES may do the scanning provided that the results have already been entered into the case notes.
- (3) Since the applicant or sponsor bears full financial responsibility for testing, we have no objection to that person also receiving a copy of the results directly from the laboratory or panel physician. Post should not give copies of DNA test results directly to petitioners, applicants, or other parties without express consent from the Department.

9 FAM 42.44 N11 REPORTING POSSIBLE COMPROMISE OF DNA SAMPLE OR RESULTS

(CT:VISA-1324; 09-25-2009)

- a. Under no circumstances may any other party, including those being tested, be permitted to carry or transport biological samples or test results. If the cleared American witness or any other member of the consular team observes or has any reason to suspect that the test specimen or results have been tampered with, or may have even momentarily or inadvertently been subject to a compromised chain of custody, immediately notify post management, CA/VO/F/P, and CA/FPP. In the case of an actual or suspected breach of custody, post **must** suspend processing of the IV case until it has consulted with, and obtained clearance from, CA/VO/F/P and CA/FPP.
- b. Any procedural questions about this guidance should be directed to CA/VO/F/P Rachel Hilton or to CA/FPP Jill Nystrom.